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VIA: Electronic Submission

For Petitioners California Sportfishing Protection Alliance, Deltakeeper Chapter of
Baykeeper and San Joaquin Audubon

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

In the Matter of Coalition Group Conditional Waiver)	
of Waste Discharge Requirements for Discharges)	PETITION FOR REVIEW
from Irrigated Lands and Individual Discharger)	
Conditional Waiver of Waste Discharge)	
Requirements for Discharges from Irrigated Lands,)	
California Regional Water Quality Control Board –)	
Central Valley Region Order No. R5-2006-0053 and)	
Order No. R5-2006-0054)	

Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the California Code of Regulations (CCR), California Sportfishing Protection Alliance, Deltakeeper Chapter of Baykeeper and San Joaquin Audubon (“CSPA” or “petitioners”) petition the State Water Resources Control Board (State Board) to review and vacate the final decision of the California Regional Water Quality Control Board for the Central Valley Region (“Regional Board”) in adopting a Coalition Group Conditional Waiver of

Waste Discharge Requirements for Discharges from Irrigated Lands and a Individual Discharger Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands on 22 June 2006. *See* Order No. R5-2006-0053 and Order No. R5-2006-0054. The issues raised in this petition were raised in timely written comments and direct testimony.

1. NAME AND ADDRESS OF THE PETITIONERS:

California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, California 95204
Attention: Bill Jennings, Executive Director

Deltakeeper Chapter of Baykeeper
445 Weber Avenue, #137B
Stockton, CA 95203
Attention: Carrie McNeil, Deltakeeper

San Joaquin Audubon
3900 River Drive
Stockton, CA 95204
Attention: Waldo Holt, Conservation Chair

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

Petitioners seek review of Order No. R5-2006-0053, Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, and Order No. R5-2006-0054, Individual Discharger Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands. Copies of the orders adopted by the Regional Board at its 22 June 2006 Board meeting are attached hereto as Attachments D and E..

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

22 June 2006

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

More than a hundred and fifty environmental, fishing and environmental justice organizations joined together and submitted comments strongly opposing the renewal of the 2003 Waivers. Representatives from many of these organizations testified at the 22

June 2006 Regional Board hearing that the tentative Waivers were not protective of human health and the environment and urged the Board to adopt a general order or, alternatively, to include specific provisions in any adopted Waivers that would improve the likelihood of success in the Irrigated Lands Program. Unfortunately, those pleas fell on deaf ears.

The adopted orders are essentially an extension of the same Waiver adopted by the Regional Board in July 2003. Any evaluation of renewed Waivers must be evaluated in light of the intervening three years and the track record of the Regional Board's Irrigated Lands Program. The Irrigated Lands Program can be charitably described as a dismal and embarrassing failure. The Regional Board has failed to ensure compliance with minimal requirements of the adopted Waivers. Coalitions have refused to identify their members or comply with monitoring and reporting requirements of the 2003 Waiver. Virtually no management plans have been required or submitted to identify the specific ways in which current exceedances in water quality will be avoided in the future. The program cannot document any measurable progress in reducing discharges of pollutants from irrigated lands. Yet, the Regional Board has failed to initiate a single enforcement action against an individual discharger or a coalition. The Waiver fails to address protection of groundwater. Insufficient resources have led to a dismally inadequate regulatory program in which funds from non-related programs have been illegally used to supplement the inadequacy of fee revenue.

Consequently, after three years of Waiver implementation, the Irrigated Lands Program is unable to identify who is discharging pollutants, what pollutants are being discharged, who is participating in the program, who has or has not implemented best management practices or whether any reductions in pollutant loading or improvements in water quality have occurred. Inexplicably, the Regional Board, on 22 June 2006, adopted a five-year renewal of the Waivers that are even less protective than the ones they replaced. Given the pervasive failures of the Irrigated Lands Program and the inconsistency of Waiver provisions with the Basin Plan and Water Code, renewed Waivers are clearly not in the public interest.

The Regional Board failed to comply with explicit requirements of the California Environmental Quality Act (CEQA) by relying upon the 2003 Negative Declaration despite significant changes in the project and project setting. The renewed Waiver is in fact for purposes of CEQA a new project requiring a new CEQA document. Since adoption of the 2003 Negative Declaration, there have been substantial changes that involve new significant environmental impacts, significant changes have occurred with respect to the circumstances of the project and new information has come to light that reveals that the project will have significant effects.

A few examples of the substantial changes necessitating a new CEQA document include the demonstrative failures of the current program and, failure of the Regional Board to enforce minimal conditions of the Waiver, the additional species and critical habitat listings pursuant to the federal Endangered Species Act, the present catastrophic crash of pelagic species in the Sacramento-San Joaquin Delta Estuary, changes in

cropping patterns, the application of new chemicals and the recent pervasive sediment toxicity caused by pyrethroids. All of the above have occurred since adoption of the 2003 Negative Declaration and require the preparation of a new environmental document. Additionally, the environmental impacts caused by the end of monitoring by U.C. Davis, elimination of requirements to monitor for certain constituents under Phase II and the blatant failures of the monitoring program should have been evaluated in a new CEQA document.

There is nothing in the adopted Waiver that comports with explicit requirements in State Board Resolution No. 68-16 or the State Board's 2 July 1990 Administrative Procedures Update 90-004 regarding a legally acceptable antidegradation analysis. Further, the Waiver is inconsistent with the provisions of the state's Nonpoint Source Pollution Control Program Policy, does not comply with the specific requirements of the Basin Plan's Pesticide Control Policy and fails to address protection of groundwater despite the importance of groundwater as a key source of irrigation and drinking water and despite science demonstrating agricultural impacts to groundwater. Testimony from southern San Joaquin Valley residents at the hearing clearly demonstrated the imperative for this program to comply with the existing antidegradation policy protecting groundwater.

The reasons the actions of the Regional Board were inappropriate and improper are more fully laid out in Petitioners' 19 May 2006 comment letter to the Regional Board (Attachment A), the Powerpoint presentation provided to the Regional Board on 22 June 2006 (Attachment B) and the Powerpoint presentation provided to the joint Regional and State Board workshop in June 2005 (Attachment C). Those documents are attached hereto. The outline of Petitioners' 19 May 2006 comment letter follows:

- I. THE BOARD'S FINDINGS THAT THE WAIVER IS IN THE PUBLIC INTEREST IS NOT SUPPORTED BY THE WEIGHT OF THE EVIDENCE: THE BOARDS HAVE NO EVIDENCE AS TO WHAT, IF ANY, ADDITIONAL POLLUTION CONTROL MEASURES THE DISCHARGER COALITIONS WILL APPLY, WHEN AND WHERE THEY WOULD APPLY, OR WHETHER THEY WOULD BE EFFECTIVE
 - A. The Evidence Overwhelmingly Demonstrates That Discharges From Agriculture Have Violated Water Quality Objectives And Will Do So Again In The Future Pursuant To The Conditions of The Waiver
 - B. The Evidence Graphically Establishes That Coalitions Have Failed To Comply With Waiver Conditions
 - C. The Evidence Establishes The Regional Board Cannot or Will not Enforce Fundamental Waiver Conditions
 - D. The Evidence Shows The Waiver's Monitoring Program Is Deficient

- E. Waiving Substantial Waste Discharges That Violate Water Quality Objectives Is Not In The Public Interest And Inconsistent With The Intent Of The Legislature
- F. Waiving WDRs For Discharges of Agricultural Wastes That Have Been Identified As Causing Or Contributing To the Further Decline Of The Sacramento-San Joaquin Delta And California's Beleaguered Fisheries Cannot Be In The Public Interest
- G. The Waiver's Conditions Violate the Water Code By Exempting Agriculture From Having To Comply With Water Quality Objectives For The Foreseeable Future
 - 1. The Waiver Cannot Ensure Attainment Of Water Quality Standards
 - 2. The Waiver's De Facto Time Schedule Is Illegal And Cannot Be In The Public Interest
- H. The Waiver Conditions Do Not Assure Pollution Reductions By Individual Farms
 - 1. Farm-Specific Pollution Prevention Plans Are Needed To Assure Reductions In Pollution Loadings
 - 2. All Coalition Members Must Affirmatively Opt-In To A Coalition And Provide Relevant Information
 - 3. Adequate Fees Are Essential To The Success Of Any Sustainable Program Addressing Agricultural Pollution Discharges
- I. The Board Cannot Assume That A Program That Fails To Reach Out To Individual Dischargers Will Be Effective Because The Boards Have Not Gathered Any Evidence About Who, What, Where Or When Farming Discharges Occur
- J. In Order For Coalitions To Be Successful, They Must Be Subject To Clear Conditions, Goals And Rational Checks & Balances
 - 1. The Agricultural Discharge Program Must Limit The Size Of Coalitions
 - 2. The Agricultural Discharge Program Must Establish A Clear Deadline For All Dischargers To Comply With Water Quality Objectives
 - 3. Coalitions Must Be Obligated Each Year To Determine Their Existing Loadings And Estimate The Next Year's Reductions
 - 4. Regional Board Review And Approval Of Key Milestones Must Be Included In The Program
 - 5. The Current Conditions, Numerous Assertions In The Proposed Waiver Rely on Assumptions And Conjecture Rather Than The Weight Of The Evidence
- II. THE PROPOSED WAIVER MUST ADDRESS INCREASING POLLUTION OF GROUNDWATER FROM AGRICULTURAL ACTIVITIES

III. THE PROPOSED WAIVER IS INCONSISTENT WITH THE REGIONAL BOARD'S BASIN PLAN AND THE STATE AND FEDERAL ANTIDEGRADATION POLICIES

1. The Regional Board's Finding That The Waiver Is Consistent With State Board Resolution No. 68-16 Is Contrary To Law, Not Supported By The Weight Of The Evidence And Inconsistent With Other Findings
 - a. Neither the Dischargers Nor the Regional Board Have Demonstrated That Agricultural Discharges That Add Concentrations of Pollutants Well Above Natural Background Levels are to the Maximum Benefit of the Public or Will Comply With Objectives
 - b. The Waiver Violates The High Quality Waters Policy That WDRs Be Issued to Discharges Triggering the Policy's Mandates
 - c. The Regional Board Does Not Know What Control Measures Are or May Be Implemented by Agricultural Discharges Now or in the Future and Has No Evidence That "Best Practicable Treatment or Control" is Required by the Waiver
2. The Waiver is Inconsistent with the Basin Plan and Not Supported by the Weight of Evidence
3. The Regional Board Failed to Consider the Federal Antidegradation Policy
4. The Waiver is Inconsistent with Nonpoint Source Pollution Control Program Policy (NPS)

IV. THE REGIONAL BOARD'S NEGATIVE DECLARATION VIOLATES CEQA AND IS NOT BASED ON SUBSTANTIAL EVIDENCE

5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED.

Petitioners are non-profit, environmental organizations that have a direct interest in reducing pollution to the waters of the Central Valley. Petitioners' members benefit directly from the waters in the form of recreational hiking, photography, fishing, swimming, hunting, bird watching, boating, consumption of drinking water and scientific investigation. Additionally, the Delta and its tributaries are an important resource for recreational and commercial fisheries.

The Delta and tributary waters also provide significant wildlife values important to the mission and purpose of the Petitioners. This wildlife value includes critical nesting and feeding grounds for resident water birds, essential habitat for endangered species and other plants and animals, nursery areas for fish and shellfish and their aquatic food organisms, and numerous city and county parks and open space areas.

Petitioners' members reside in communities whose economic prosperity depends, in part, upon the quality of water. Petitioners' routinely participate on proceedings before both the State and Regional Board and are engaged in educational activities and the monitoring of water quality in the Delta and its tributaries.

Petitioners' health, interests and pocketbooks are directly harmed by the failure of the Regional Board to develop an effective and legally defensible program addressing discharges from irrigated lands.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS.

Petitioners seek an Order by the State Board to:

- A. Vacate Order No. R5-2006-0053 and Order No. R5-2006-0054.
- B. Either issue general WDRs for agricultural discharges or remand the matter back to the Regional Board with an order to issue general WDRs for agricultural discharges that include at a minimum all of the following conditions:
 - 1. Any functional program must include payment of annual fees by individual dischargers that sufficiently and fully cover the Regional Board's costs of administering and enforcing the program.
 - 2. The language of the general WDR must require compliance with water quality standards no later than 10 years from the date the waiver is issued, or sooner where required by a TMDL.
 - 3. Any general WDRs must be fully consistent with the Water Code, the Basin Plan, Nonpoint Source Control Policy and antidegradation policies with an attainable goal of achieving water quality objectives and fully protecting beneficial uses and the public interest.
 - 4. All farmers, including those operating within Coalitions, must provide contact information to the Regional Board that includes the name(s) of the farm owner and operator, and the mailing address the telephone number at which the owner and operator of the farm may be contacted.
 - 5. The size of Coalitions must be specifically limited to specific subwatersheds identified by the Board.
 - 6. All farms, including those within Coalitions, must prepare individual pollution prevention plans that include the application of management practices equal to best practicable technologies.
 - 7. Coalitions must be required to prepare Management Plans where violations of water quality standards are identified that will a) further define the extent of the problem, b) identify specific

sources, c) propose and implement management measures to address the violations and d) quantify the success of applied measures.

8. Coalitions must be required to estimate their current loadings annually for all pollutants contributing to water quality impairments identified under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d) and other pollutants identified by the Regional Board, and to identify the estimated reductions of those pollutants the Coalitions expect to achieve in the upcoming year.
9. Any general WDRs must include a monitoring program that is at least as stringent as the program proposed by Regional Board staff in April 2003, and expanded to respond to the comments by various experts at that time and address water quality by subwatershed as in #5 above.
10. Any Order must address groundwater protection and associated monitoring requirements.
11. The Regional Board, not just staff, must annually review and approve and proposed Coalition programs as well as their key deliverables, including the monitoring programs, the management practices, the implementation plans, and the funding mechanisms.

- C. Either prepare environmental documentation or order the Regional Board to prepare environmental documentation adequate to comply with the California Environmental Quality Act for any conditional waiver that the Board proposes to address discharges of pollutants from agricultural operations.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION.

Petitioners' arguments and points of authority are detailed in their 19 May 2006 comment letter, testimony and the PowerPoint presentation presented to the Regional Board on 22 June 2006 and the Powerpoint presentation presented to the joint Regional and State Board workshop on June 2005. Should the State Board have additional questions regarding the issues raised in this petition, the petitioners will provide additional briefing on any such questions.

The petitioners believe that an evidentiary hearing before the State Board will not be necessary to resolve the issues raised in this petition. However, the petitioners welcome the opportunity to present oral argument and respond to any questions the State Board may have regarding this petition.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER.

As the irrigated lands coalitions have refused to provide membership lists, Petitioners' cannot know the names of the unknown number of actual dischargers.

A true and correct copy of this petition was sent electronically to Ms. Pamela Creedon, Executive Officer, Mr. Ken Landau, Assistant Executive Officer and Mr. Bill Croyle, Irrigated Lands Waiver Program Manager of the Central Valley Regional Water Quality Control Board 24 July 2006 and electronically circulated to the irrigated lands coalitions and the California Farm Bureau Federation.

9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD.

Petitioner's presented the issues raised in this petition to the Regional Board during or before the 22 June 2006 hearing on the Irrigated Lands Waiver.

If you have any questions regarding this petition, please contact Bill Jennings at (209) 464-5067 or Michael Lozeau at (510) 749-9102.

Dated: 24 July 2006

Respectfully submitted,

Original signed by Bill Jennings

Bill Jennings, Executive Director, California Sportfishing Protection Alliance
For: Carrie McNeil, Deltakeeper Chapter of Baykeeper and Waldo Holt, San Joaquin Audubon

Attachments:

- A. Petitioners' 19 May 2006 comment letter to the Regional Board
- B. Petitioners' Powerpoint presentation at the 22 June 2006 Regional Board hearing.
- C. Petitioner's Powerpoint presentation at the June 2005 joint State and Regional Board meeting
- D. Allied Fishing Group 18 May 2006 letter
- E. Final Environmental Coalition 22 June 2006 letter
- F. Order No. R5-2006-0053.
- G. Order No. R5-2006-0054.